

# Agenda

## Item #10



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

To: Commissioners

From: Jonathan Wayne, Executive Director

Date: November 20, 2012

Re: Request for Waiver of Finding of Violation by the Orono Democratic Committee

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The Orono Democratic Committee (the Committee) is a local Democratic Party committee which was required to file an 11-Day Pre-General Report. This report was due on Friday, October 26, 2012. The Committee mailed it two days before the deadline by regular mail, but the Commission did not receive it until Monday, October 29 – three days late. Based on the amount of financial activity in the report and the number of days late, the preliminary penalty was automatically waived because it was less than \$10.00.

The Commission staff sent a letter indicating a finding of violation but no penalty to James N. Dearman, the treasurer for the Committee, on November 1, 2012. The Commission staff received a written request for a waiver of the violation on November 7, 2012.

The Committee requests a waiver of the finding of violation because:

- The Committee made a “bona fide effort to file the report” by sending the 11-Day Pre-General report by regular USPS mail on October 24, 2012 (not October 31, 2012 as the Committee reported in its waiver request), and were surprised when the letter did not arrive at the Commission office until October 29, 2012.

## **Staff Recommendation**

The Commission staff appreciates that the committee did make a bona fide effort to file the report on time. Nevertheless, the U.S. Postal Service is imperfect, and the mailing of the report on October 24, 2012 inherently involved some risk that our office would not receive the report on October 26, 2012. It was the Committee's responsibility to make sure that the Commission received the report no later than Friday, October 26. So, the Commission staff recommends not waiving the finding of violation. The report was late.

Under 21-A M.R.S.A. §1020-A(2), a report is not timely filed unless the report "is received by the commission by 11:59 p.m. on the date it is due." With regard to the mailing a report, 21-A M.R.S.A. §1020-A(4-A) provides an exception to the "received" requirement for a report "sent by certified or registered United States mail and postmarked at least 2 days before the deadline." In this case, Mr. Dearman sent the report by regular mail – not certified or registered mail.

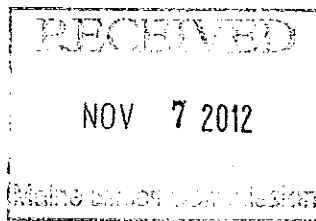
Also, the language in § 1020-A(2) suggest that the Commission may "waive the penalty in whole or in part" due to mitigating circumstances. It is unclear that the Legislature intended the Commission to waive a finding of violation altogether.

Thank you for your consideration of this memo.

Orono Democratic Committee  
16 University Place  
Orono, Maine 04473

November 5, 2012

Jonathan Wayne, Executive Director  
c/o Maine Ethics Commission  
135 State House Station  
Augusta, ME 04333-0135




Dear Mr. Wayne:

I am in receipt of your letter dated November 1, 2012 in which we have been found in violation for late reporting. Our report was apparently one day late, but we believe that the lateness was due to mitigating circumstances, and request a waiver of the finding.

Since the report was mailed on Wednesday, October 31, 2012, we feel that the committee made a bona fide effort to file the report on time, since it ordinarily takes one day for a letter to reach Augusta from this area. Why it took three days is unknown to me, unless the storm caused a delay. I have enclosed a copy of the receipt from the Orono Post Office for first class postage to Augusta as documentation.

I can be reached at 866-3054, or [jamesndearman@gmail.com](mailto:jamesndearman@gmail.com). Thank you for your consideration.

Sincerely,



James N. Dearman  
Treasurer

Enc.

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ORONO MAIN POST OFFICE  
ORONO, Maine  
044739998  
2269030473-0099  
10/24/2012 (207)866-2566 11:05:29 AM  
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===== Sales Receipt =====

Product	Sale Unit	Final
Description	Qty Price	Price

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AUGUSTA ME 04333		\$0.65
Zone-2 First-Class		
Letter		
1.50 oz.		

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Issue PVI:	\$0.65
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Total: \$0.65

Paid by:

Cash	\$0.75
Change Due:	-\$0.10

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1-800-ASK-USPS.

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Refunds for guaranteed services only  
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STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

November 1, 2012

**By Regular and Certified Mail**

Mr. James N. Dearman, Treasurer  
Orono Democratic Committee  
16 University Place  
Orono, ME 04473

**Re: Late Filing of 11-Day Pre-General Report**

Dear Mr. Dearman,

The Commission staff has made a preliminary determination that the Orono Democratic Party (the Committee) was late in filing its 11-Day Pre-General report. The report was due by 11:59 p.m. on October 26, 2012, but was not filed until October 29. Under the Commission's statutes, the late filing of a report triggers an enforcement process. (21-A M.R.S.A. § 1020-A) Based on the amount of financial activity in the report, the number of calendar days the report was late, and the committee's history of violations, the commission staff has determined that no penalty is owed because the assessed penalty was less than \$10.

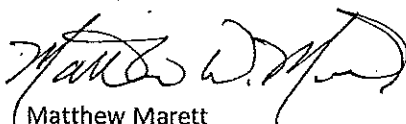
Although no penalty is being assessed, the late filing will result in a finding of violation. The Committee may request that the Commission waive the violation. Any request for a waiver must be made within 14 calendar days of your receipt of this notice (or attempted delivery by the U.S. Post Office). The request must contain a full explanation of the reasons the Committee filed late. Upon receiving your request, the Commission staff will schedule your appeal for an upcoming Commission meeting. Please direct all waiver requests to:

Jonathan Wayne, Executive Director  
c/o Maine Ethics Commission  
135 State House Station  
Augusta, ME 04333.

The Commission may waive the penalty if it determines that the report was late due to mitigating circumstances, which are defined as (1) a valid emergency; (2) an error made by the Commission staff; (3) failure to receive notice of the filing deadline; or (4) relevant evidence that the Committee made a bona fide effort to file the report on time. Also, the Commission may waive the penalty if it is disproportionate to the level of experience of the person filing the report or the harm suffered by the public from the late disclosure. (21-A M.R.S.A. § 1020-A)

Please call me at (207) 287-6221 or send me an email at [Matthew.Marett@Maine.gov](mailto:Matthew.Marett@Maine.gov) if you have any questions.

Sincerely,

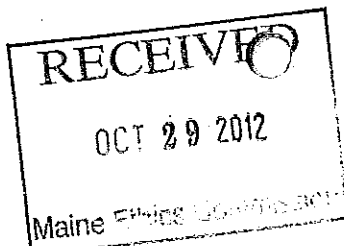


Matthew Marett  
PAC, Party & Lobbyist Registrar

OFFICE LOCATED AT: 45 MEMORIAL CIRCLE, AUGUSTA, MAINE  
WEBSITE: [WWW.MAINE.GOV/ETHICS](http://WWW.MAINE.GOV/ETHICS)

PHONE: (207) 287-4179

FAX: (207) 287-6775



COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES  
Mail: 135 State House Station, Augusta, Maine 04333  
Office: 45 Memorial Circle, Augusta, Maine

Website: [www.maine.gov/ethics](http://www.maine.gov/ethics)  
Phone: 207-287-4179  
Fax: 207-287-6775

## 2012 CAMPAIGN FINANCE REPORT

### For Local Party Committees

Please complete ALL entries.

NAME OF COMMITTEE	ORONO DEMOCRATIC COMMITTEE			<input type="checkbox"/> CHECK IF CHANGED FROM PREVIOUS REPORT
STREET	16 UNIVERSITY PL.			
CITY AND ZIP CODE	ORONO 04473	TELEPHONE NUMBER	866-3054	
E-MAIL	JAMESNDEARMAN@GMAIL.COM			<input type="checkbox"/> CHECK IF CHANGED FROM PREVIOUS REPORT
NAME OF TREASURER	JAMES N. DEARMAN			
MAILING ADDRESS STREET	SAME			
CITY AND ZIP CODE		TELEPHONE NUMBER		
E-MAIL				

Type of Report	Due Date	Dates of Report Period
<input type="checkbox"/> July Semi-Annual	July 16, 2012	January 1, 2012 — June 30, 2012
<input type="checkbox"/> 11-Day Pre General	October 26, 2012	July 1, 2012 — October 23, 2012
<input type="checkbox"/> January Semi-Annual	January 15, 2013	October 24, 2012 — December 31, 2012
<input type="checkbox"/> Amendment to: _____		
<input type="checkbox"/> No Activity Report: Use only if the committee had no contributions and no expenditures and did not incur any unpaid debts or obligations during the reporting period. Check the appropriate report above as well.		

I CERTIFY THAT I HAVE EXAMINED THIS REPORT AND TO THE BEST OF MY KNOWLEDGE IT IS TRUE,  
CORRECT, AND COMPLETE.

Treasurer's Signature

Date

## 21-A M.R.S.A. §1020-A. FAILURE TO FILE ON TIME

**1. Registration.** A candidate that fails to register the name of a candidate, treasurer or political committee with the commission within the time allowed by section 1013-A, subsection 1 may be assessed a forfeiture of \$10. The commission shall determine whether a registration satisfies the requirements for timely filing under section 1013-A, subsection 1.

[ 1995, c. 483, §15 (NEW) .]

**2. Campaign finance reports.** A campaign finance report is not timely filed unless a properly signed or electronically submitted copy of the report, substantially conforming to the disclosure requirements of this subchapter, is received by the commission by 11:59 p.m. on the date it is due. Except as provided in subsection 7, the commission shall determine whether a report satisfies the requirements for timely filing. The commission may waive a penalty in whole or in part if the commission determines that the penalty is disproportionate to the size of the candidate's campaign, the level of experience of the candidate, treasurer or campaign staff or the harm suffered by the public from the late disclosure. The commission may waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances. For purposes of this section, "mitigating circumstances" means:

- A. A valid emergency determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part; [1999, c. 729, §5 (AMD) .]
- B. An error by the commission staff; [1999, c. 729, §5 (AMD) .]
- C. Failure to receive notice of the filing deadline; or [1999, c. 729, §5 (AMD) .]
- D. Other circumstances determined by the commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service or interruptions in Internet service.. [2009, c. 190, Pt. A, §13 (AMD) .]

[ 2009, c. 190, Pt. A, §13 (AMD) .]

**3. Municipal campaign finance reports.** Municipal campaign finance reports must be filed, subject to all the provisions of this subchapter, with the municipal clerk on forms prescribed by the Commission on Governmental Ethics and Election Practices. The municipal clerk shall send any notice of lateness required by subsection 6 and shall notify the commission of any late reports subject to a penalty.

[ 2011, c. 389, §22 (AMD); 2011, c. 389, §62 (AFF) .]

### **4. Basis for penalties.**

[ 2001, c. 470, §7 (AMD); T. 21-A, §1020-A, sub-§4 (RP) .]

**4-A. Basis for penalties.** The penalty for late filing of a report required under this subchapter, except for accelerated campaign finance reports required pursuant to section 1017, subsection 3-B, is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days late, as follows:

- A. For the first violation, 1%; [2001, c. 714, Pt. PP, §1 (NEW); 2001, c. 714, Pt. PP, §2 (AFF) .]
- B. For the 2nd violation, 3%; and [2001, c. 714, Pt. PP, §1 (NEW); 2001, c. 714, Pt. PP, §2 (AFF) .]
- C. For the 3rd and subsequent violations, 5%. [2001, c. 714, Pt. PP, §1 (NEW); 2001, c. 714, Pt. PP, §2 (AFF) .]